



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1998

Ms. Donna Atwood
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Drawer 619428
DFW Airport, Texas 75261-9428

OR98-1965

Dear Ms. Atwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116604.

The Dallas/Fort Worth International Airport (the "airport") received an open records request for the "draft study regarding oil and gas drilling on airport property." You contend that the requested information is excepted from required public disclosure pursuant to sections 552.111 and 552.113 of the Government Code.

Section 552.113 of the Government Code provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is:

....

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

In Open Records Decision No. 627 (1994), this office concluded that section 552.113(a)(2) protects from public disclosure only commercially valuable geological and geophysical information regarding the exploration or development of natural resources. Open Records Decision No. 627 (1994) at 3-4 (overruling rationale of Open Records Decision No. 504 (1988)). The decision explained that the phrase "information regarding the exploration or

development of natural resources” means “information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation.” *Id.* at 4 n.4.

We have reviewed the draft oil and gas study. This report outlines “the presence or absence of natural resources in a particular location” and consists of “information indicating the extent of a particular deposit or accumulation.” You have not, however, met your burden of demonstrating how this information is “commercially valuable” to the airport. We therefore conclude that the airport may not withhold the draft report pursuant to section 552.113 of the Government Code.

Consequently, we must address whether specific portions of the draft report that you have marked may be withheld from the public pursuant to section 552.111 of the Government Code. Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity’s policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref’d n.r.e.) (emphasis added). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency’s policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

In Open Records Decision No. 429 (1985), this office indicated that information protected by section 552.111 must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283 (1981), 273 (1981). This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 552.111. Open Records Decision No. 464 (1987). *See Wu v. National Endowment of the Humanities*, 460 F.2d 1030 (5th Cir.), *cert. denied*, 410 U.S. 926 (1972). In this regard we note that the report was prepared by an outside consultant in order to enable the airport to evaluate the potential for oil and gas development on airport property, an issue we believe clearly implicates the policymaking functions of the airport.

Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 at 5. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). We have marked those portions of the draft report that the airport may withhold pursuant to section 552.111. The remaining portions of the report must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings
Deputy Chief
Open Records Division

KHH/RWP/mjc

Ref.: ID# 116604

Enclosures: Submitted documents

cc: Mr. Todd Bensman
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(w/o enclosures)